

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
OFFICE OF THE CHIEF ADMINISTRATIVE HEARING OFFICER

June 7, 1999

UNITED STATES OF AMERICA,)	
Complainant,)	
)	
v.)	
)	8 U.S.C. § 1324a Proceeding
VALPOL CORP., VALENTINO'S)	OCAHO Case No. 99A00018
D/B/A VALENTINO'S FAMILY RESTAURANT)	
AND PIZZERIA,)	
Respondent.)	
_____)	

FINAL DECISION AND ORDER

Appearances: William F. McColough, Esquire
Immigration and Naturalization Service for complainant

C. George Kanabis, Esquire
Kanabis & Houle for respondent

Before: Honorable Joseph E. McGuire

On December 30, 1998, complainant, acting by and through the Immigration and Naturalization Service (INS or complainant), commenced this action, which arises under the Immigration Reform and Control Act of 1986 (IRCA), as amended, 8 U.S.C. § 1324a, by having filed a two-count Complaint with the Office of the Chief Administrative Hearing Officer (OCAHO).

That initiating pleading contained two alleged IRCA violations namely, one illegal hire infraction and one paperwork violation, for which civil money penalties totaling \$1,050 had been assessed.

Count I alleged that Valpol Corporation, Valentino's, doing business as Valentino's Family Restaurant (Valpol or respondent) violated the provisions of 8 U.S.C. § 1324a(a)(1)(A) by having knowingly hired an alien not authorized to work in the United States and doing so after November 6, 1986. For this alleged infraction, INS assessed a civil money penalty of \$740.

In Count II it was alleged that Valpol had violated the provisions of 8 U.S.C. § 1324a(a)(1)(B) by having failed to prepare an Employment Eligibility Form (Form I-9) and/or having failed to make the required Form I-9 available for inspection. For this paperwork infraction, INS levied a civil money penalty of \$310.

On January 19, 1999, Valpol filed an Answer to the Complaint.

On June 3, 1999, the parties jointly filed Consent Findings, a Motion to Approve Consent Findings, and a proposed Decision and Order which resolve all matters in controversy.

Under the pertinent rule of OCAHO Rules of Practice and Procedure, 64 Fed. Reg. 7066, 7075 (1999) (to be codified at 28 C.F.R. § 68.14),¹ where the parties have submitted a settlement agreement containing consent findings and a proposed decision and order, the administrative law judge may, if satisfied with its timeliness, form and substance, accept such an agreement by issuing a decision and order based upon the agreed findings.

It is found that the terms of the Consent Findings comply with the applicable regulations and are appropriate in timeliness, form, and substance pursuant to the provisions of the pertinent procedural rule. It is further found that under the terms of the Consent Findings and pursuant to the provisions of that procedural rule:

1. Valpol has withdrawn its request for a hearing on the merits;
2. Valpol, without admitting or denying the two allegations set forth in Counts I and II of the Complaint, understands that those violations will be deemed to be first offenses of section 1324a and agrees to pay civil money penalties in the total amount of \$800 in full satisfaction of the Final Order and of all claims set forth in the Complaint;
3. Valpol further agrees that the two allegations contained in Counts I and II of the Complaint constitute first offenses and that any future violations of the provisions of 8 U.S.C. § 1324a by Valpol will be treated as subsequent offenses for the purpose of assessing enhanced penalties;
4. The parties have waived any further procedural steps before the administrative law judge;

¹Portions of the Rules of Practice and Procedure for Administrative Hearings, codified at Part 68 of Title 28 of the Code of Federal Regulations, have been amended by the interim rule of February 12, 1999. Citation to the amended portions of Part 68 are to the interim rule published in the Federal Register, 64 Fed. Reg. 7066 (1999). Citation to the portions of Part 68 which were not affected by the interim rule are to the most recent volume of the Code of Federal Regulations, 28 C.F.R. Part 68 (1998).

5. Each party shall bear its own costs and attorney's fees and any other expenses each has incurred in this action;

6. The parties have waived any right to challenge or contest the validity of this Final Decision and Order;

7. The entire record on which this Final Decision and Order is based consists solely of the Complaint, the Notice of Hearing, and the Consent Findings, which are incorporated herein by reference;

8. This Final Decision and Order shall have the same force and effect as if this ruling had been issued following a full administrative hearing.

Order

The Consent Findings, which are dispositive of all issues herein, are approved and the Complaint is hereby ordered to be dismissed with prejudice to refiling.

Joseph E. McGuire
Administrative Law Judge

CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of June, 1999, I have served copies of the foregoing Final Decision and Order on the following persons at the addresses shown, in the manner indicated:

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